



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA-R02-OW-2014-0587, FRL- 9917-51-Region-2]

Modification of the Designations of the Caribbean Ocean Dredged Material Disposal Sites (San Juan Harbor, PR; Yabucoa Harbor, PR; Ponce Harbor, PR; Mayaguez Harbor, PR; Arecibo Harbor, PR)

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to modify the designations for the five Ocean Dredged Material Disposal Sites (ODMDS) around Puerto Rico (San Juan Harbor, PR ODMDS; Yabucoa Harbor, PR ODMDS; Ponce Harbor, PR ODMDS; Mayaguez Harbor, PR ODMDS; Arecibo Harbor, PR ODMDS). Currently, each of the ODMDS is restricted to only allow disposal of dredged material from the specific harbor for which it is named. The proposed modification would remove the restriction that limits eligibility for disposal at each of the disposal sites based solely on the geographic origin of the dredged material. The proposed modifications to the site designations do not actually authorize the disposal of any particular dredged material at any site. All proposals to dispose of dredged material at any of the designated sites will continue to be subject to project – specific reviews and must still be demonstrated to satisfy the criteria for ocean dumping before any material is authorized for disposal. This action is necessary to provide long-term flexibility for management of any dredged material that may potentially be derived from maintenance, development, or

emergency activities in areas outside those harbors currently provided for in the designations. The proposed modifications to the site designations are for an indefinite period of time. Each ODMDS will continue to be monitored to ensure that significant unacceptable, adverse environmental impacts do not occur as a result of dredged material disposal at the site.

DATES: Comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R02-OW-2014-0587, by one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>; follow the online instruction for submitting comments.

- E-mail: Mr. Mark Reiss at reiss.mark@epa.gov.
- Fax: Mr. Mark Reiss, Dredging Sediment and Oceans Section (CWD) at fax number 212-637-3887.
- Mail: Mr. Mark Reiss, Dredging Sediment and Oceans Section (CWD), U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York NY 10007.

Instructions: Direct your comments to Docket No. EPA-R02-OW-2014-0587. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The

www.regulations.gov web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic comments must be submitted as an ASCII or Microsoft Word file avoiding the use of special characters and any form of encryption, and that are free of any defects or viruses.

Comments will also be accepted on disks in Microsoft Word or ASCII file format sent or delivered to the address above. All comments and data in electronic form must be identified by the name, date and Federal Register citation of this notice. No confidential business information should be sent via e-mail.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Dredging, Sediment and Oceans Section (CWD), U.S. Environmental Protection Agency, Region 2, 290 Broadway, New

York NY 10007 or at the Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Region 2 City View Plaza II – Suite 7000 #48 Rd. 165 km 1.2. Guaynabo, PR 00968-8069. The file will be made available by appointment for public inspection between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below. If possible, please make the appointment at least two working days in advance of your visit.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Reiss, U.S. Environmental Protection Agency, Region, 290 Broadway, 24th Floor (CWD), New York, NY 10007-1866, telephone (212) 637-3799, electronic mail: reiss.mark@epa.gov

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I. Potentially Affected Persons

Entities potentially regulated by this action are persons, organizations, or government bodies seeking to dispose of dredged material into Caribbean ocean waters, under the Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* (hereinafter referred to as the MPRSA) and its implementing regulations. This proposed rule is expected to be primarily of relevance to (a) parties seeking permits from the U.S. Army Corps of Engineers to transport dredged material for the purpose of disposal into Caribbean ocean waters and (b) to the Corps itself for its own dredged material disposal projects. Potentially regulated categories and entities that may seek to use the Caribbean ODMDS may include:

Category	Examples of Potentially regulated entities
Federal Government.....	U.S. Army Corps of Engineers Civil Works Projects, and Other Federal Agencies.
Industry and General Public.....	Port Authorities, Marinas and Harbors, Shipyards, and Marine Repair Facilities, Berth Owners.
State, local and tribal governments.....	Governments owning and /or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding the types of entities that could potentially be affected should the proposed rule become a final rule. To determine whether your organization is affected by this action, you should carefully consider whether your organization is subject to the requirement to obtain a MPRSA permit in accordance with the Purpose and Scope of 40 CFR 220.1, and you wish to use the sites subject to today's proposal. EPA notes that nothing in this proposed rule alters the jurisdiction or authority of EPA or the types of entities regulated under the MPRSA. Questions regarding the applicability of this proposed rule to a particular entity should be directed to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 et seq., gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. These proposed modifications are being made pursuant to that authority.

The ODMDS herein specified are located within Region 2; therefore, this action is being taken pursuant to the Regional Administrator's delegated authority. EPA's ocean dumping regulations (40 CFR 228.4(e)(1)) promulgated under the MPRSA require, among other things, that EPA designate ocean dumping sites (ODMDS) by promulgation of a site designation in 40 CFR Part 228. Designated ocean dumping sites are codified at 40 CFR 228.15. This rule proposes to modify the site designations for the five open water dredged material disposal sites around the Caribbean. These sites are located in ocean waters off Puerto Rico. Arecibo Harbor, PR ODMDS and San Juan Harbor, PR ODMDS are closest to shore, lying 1.5 nautical miles and 1.4 nautical miles north of the respective harbors for which they are named; all of the others are at least 4 nautical miles from the respective harbors for which they are named.

The site modifications are being proposed in this action to provide the Corps, Commonwealth of Puerto Rico, municipal, and private entities with greater long term flexibility in managing dredged materials outside the specific harbors currently provided for in the designations. The modifications would also allow for management of dredged materials associated with any eventual development, re-development or emergency (i.e., post-hurricane) needs in those areas.

Each ODMDS will be subject to continuing site management and monitoring to ensure that unacceptable, adverse environmental impacts do not occur. The management of each ODMDS is further described in the Site Monitoring and Management Plans (SMMPs) for the sites (to date, SMMPs have been prepared for the Arecibo Harbor, PR, Yabucoa Harbor, PR, Ponce Harbor, PR, and San Juan Harbor, PR ODMDS; a SMMP will be prepared for the Mayaguez Harbor, PR ODMDS before it is used for dredged material disposal). This proposed rule is the only document being made available for public comment by EPA at this time. The modification of the designations is being proposed in accordance with 40 CFR 228.3(b) of the Ocean Dumping Regulations, which allows EPA to modify the use and designation of ocean dredged material disposal sites.

III. Proposed Action

EPA is publishing this Proposed Rule to propose the removal of the geographic restrictions on the origin of the dredged material that can be disposed from the designations of the San Juan Harbor, PR Ponce Harbor, PR, Yabucoa Harbor, PR, Mayaguez Harbor, PR and Arecibo Harbor, PR ODMDSs. The monitoring and management of requirements that will apply to each site are to be described in the SMMP prepared for the site before its use. Management and monitoring will be carried out by EPA Region 2 in conjunction with the Corps' Jacksonville District.

Modification of the designation of ocean disposal sites under 40 CFR part 228 is essentially a preliminary, planning measure. The practical effect of such a designation is only to require that if future ocean disposal activity is permitted and/or authorized (in the case of Corps projects) under 40 CFR Part 227, then such disposal should normally be consolidated at the designated sites (See

33 U.S.C. 1413(b).) Designation of an ocean disposal site does not authorize any actual disposal and does not preclude EPA or the Corps from finding available and environmentally preferable alternative means of managing dredged materials, or from finding that certain dredged material is not suitable for ocean disposal under the applicable regulatory criteria.

This modification will provide flexibility for management of dredged material from areas outside the harbors currently provided for in the designations. However, it should be emphasized that modification of the designations of the ODMDS does not constitute or imply Corps' or EPA's approval of open water disposal of dredged material from any specific project. Before disposal of dredged material at any site may commence, Essential Fish Habitat and Endangered Species Act consultations must be completed, and EPA and the Corps must evaluate the proposal and authorize disposal according to the ocean dumping regulatory criteria (40 CFR Part 227). All projects proposed for disposal at the ODMDS will be subject to review and comment by the relevant resource agencies and the public to ensure that any concerns regarding potential impacts associated with transport of material from the project area to the ODMDS are addressed before they are authorized for disposal.

EPA has the right to disapprove the actual disposal, if it determines that environmental requirements under the MPRSA (including required Essential Fish Habitat and Endangered Species Act consultations) have not been met.

IV. Administrative Review

1. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is “significant” and therefore subject to OMB review and the requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to result in a rule that may:

- (A) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
- (B) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (C) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (D) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed action is not a “significant regulatory action” under E.O. 12866 and is therefore not subject to OMB review.

2. Paperwork Reduction Act

This proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.) because it would not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal

agency.

3. Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. For the purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) a small business based on the Small Business Administration's (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant adverse economic impact on small entities because the proposed ocean disposal site designation does not regulate small entities. The site designation will only have the effect of providing a long term environmentally acceptable disposal option for dredged materials in areas outside the harbors currently provided for in the designations. This action will help to facilitate the maintenance of safe navigation on a continuing basis. After considering the economic impacts of today's proposed rule on small entities, it has been determined that this action will not have a significant adverse economic impact on a substantial number of small entities.

4. The Unfunded Mandates Reform Act

This proposed rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) of 1995 (Pub. L. 104-4) for State, local, or tribal governments or the private sector that may result in estimated costs of \$100 million or more in any year. It imposes no new enforceable duty on any State, local or tribal governments or the private sector nor does it contain any regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this Proposed Rule.

5. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule addresses the modification of the existing site designations of ocean disposal sites in the Caribbean for the potential disposal of dredged materials. This proposed action neither creates new obligations nor alters existing authorizations of any state, local or governmental entities. Thus, Executive Order 13132 does not

apply to this rule. Although Section 6 of the Executive Order 13132 does not apply to this proposed rule, EPA did consult with representatives of State and local governments in developing this rule.

In addition, and consistent with Executive Order 13132 and EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.” “Policies that have Tribal implications” are defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.”

The proposed action does not have Tribal implications. If finalized, the proposed action would not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. This proposed rule designates an ocean dredged material disposal site and does not establish any regulatory policy with tribal implications. Thus, Executive Order 13175 does not apply to this rule.

7. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe might have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not an economically significant rule as defined under Executive Order 12866 and does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. Therefore, it is not subject to Executive Order 13045.

8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

9. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (“NTTAA”), Public Law 104-113, Section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or

adopted by voluntary consensus bodies. The NTTAA directs EPA to provide to Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

10. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. E.O. 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

No action from this proposed rule would have a disproportionately high and adverse human health and environmental effect on any particular segment of the population. In addition, this rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 12898 do not apply.

11. National Environmental Policy Act of 1969

Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. Section 4332, requires that Federal agencies prepare an environmental impact statement (EIS) on

proposals for major Federal actions significantly affecting the quality of the human environment. The objective of NEPA is to build into the agency decision-making process careful consideration of all environmental aspects of proposed actions, including evaluation of reasonable alternatives to the proposed action. Although EPA ocean dumping program activities have been determined to be “functionally equivalent” to NEPA, EPA has a voluntarily policy to follow NEPA procedures when designating ocean dumping sites. See, 63 FR 58045 (Oct. 29, 1998). The final EISs for the San Juan Harbor, PR ODMDS and the other Caribbean ODMDS were published before the above policy; the modification proposed in this rule is consistent with the NEPA evaluations performed at that time as it will not cause the volumes projected to be disposed to be exceeded at the sites.

In addition, the Corps will submit Coastal Zone Consistency determinations to the Commonwealth of Puerto Rico for individual projects proposing to dispose at the ODMDS. Coordination efforts with NMFS and USFWS for ESA and EFH consultation were completed on April 22, 2005 and May 16, 2005.

12. The Endangered Species Act

Under Section 7(a)(2) of the Endangered Species Act, 16 U.S.C. 1536(a)(2), federal agencies are required to “insure that any action authorized, funded, or carried on by such agency...is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species....” Under regulations implementing the Endangered Species Act, a federal agency is required to consult with the U. S. Fish and Wildlife Service or the National Marine Fisheries Service (depending on the species

involved) if the agency's action "may affect" endangered or threatened species or their critical habitat. See, 50 CFR 402.14(a).

On April 22, 2005 and May 9, 2005, EPA sent coordination letters to USFWS and NMFS in which the modification was described and which requested the concurrence of those two Services with EPA's determination that threatened and endangered species and their critical habitat would not be adversely affected by the proposed action. NMFS concurred by undated letter in June 2005 and USFWS concurred on May 16, 2005.

13. Magnuson-Stevens Fishery Conservation and Management Act

The 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) require the designation of essential fish habitat (EFH) for federally managed species of fish and shellfish. Pursuant to section 305(b)(2) of the MSFCMA, federal agencies are required to consult with the National Marine Fisheries Service (NMFS) regarding any action they authorize, fund, or undertake that may adversely affect EFH. An adverse effect has been defined by the Act as follows: "Any impact which reduces the quality and/or quantity of EFH. Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions." On April 22, 2005, EPA requested NMFS concurrence with its determination that the proposed modification was not likely to result in the destruction or adverse modification of categories of essential fish habitat designated by the Caribbean Fishery Management Council. NMFS concurred with this determination in a letter dated May 13, 2005 and recommended mapping of potential shelf edge reef habitat to select transit routes for laden barges as part of the permitting

process for individual projects located in areas outside the currently authorized harbors. EPA agreed to require these studies for specific projects, as necessary, as part of the permitting process.

14. Plain Language Directive

Executive Order 12866 requires each agency to write all rules in plain language. EPA has written this proposed rule in plain language in order to make it easier to understand.

15. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to “expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment.” EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means “those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law.”

Today’s proposed rule implements Section 103 of the MPRSA, which requires that permits for dredged material be subject to EPA review and concurrence. The proposed rule would amend 40 CFR 228.15 by removing the geographic restrictions on use of the ODMDS. Enabling management of the additional dredged materials at monitored designated sites restricts impacts to those areas and minimizes the potential for using other near shore discharge strategies with potentially greater impacts to the marine environment. As such, this proposed rule would afford additional protection of aquatic organisms at individual, population, community, or ecosystem

levels of ecological structures. Therefore, EPA expects today's proposed rule would advance the objective of the Executive Order to protect marine areas.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: 33 U.S.C. 1412 and 1418.

Dated: September 3, 2014.

Judith A. Enck,
Regional Administrator,
U.S. EPA, Region 2.

In consideration of the foregoing, EPA is proposing to amend part 228, chapter I of title 40 of the Code of Federal Regulations as follows:

PART 228- CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by revising paragraphs (d)(10)(vi), (d)(11)(vi) , (d)(12)(vi), (d)(13)(vi), and (d)(14)(vi) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(d) * * *

(10) * * *

(vi) *Restriction:* Disposal shall be limited to dredged material.

(11) * * *

(vi) *Restriction:* Disposal shall be limited to dredged material.

(12) * * *

(vi) *Restriction:* Disposal shall be limited to dredged material.

(13) * * *

(vi) *Restriction:* Disposal shall be limited to dredged material.

(14) * * *

(vi) *Restriction:* Disposal shall be limited to dredged material.

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[FR Doc. 2014-24348 Filed 10/10/2014 at 8:45 am; Publication Date: 10/14/2014]